

REMARKS

A. INTRODUCTION

Claims 1-31, 35, 36, 41, 42, 49-56, 60-65, 72-77, and 80-101 are pending and rejected.

Upon entry of this Amendment:

- Claims 1-31, 35, 36, 41, 42, 49-56, 60-65, 72-77, and 80-101 will be pending
- Claims 1, 36, 41, 42, 49, 51-56, 60-65, 72-74, 81 and 82 will be amended
- Claims 1, 36, 41, 42, 49, 51-56, 60-65, 72-74, 81 and 82 will be the only independent claims

B. REQUEST FOR CONTINUED EXAMINATION

This paper is being filed in response to an Office Action mailed February 27, 2007. A Request for Continued Examination (RCE), along with the appropriate fee, is being filed concurrently to ensure entry of the accompanying Amendment and consideration of these remarks.

C. SECTION 103(A) REJECTIONS

Claims 1, 3, 4, 8-21, 26-31, 35, 36, 41, 42, 49-56, 60-65, 72-77, and 80-101 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Katz (U.S. Patent No. 6055513) and Spoor (“Selling a free phone” by Dana Spoor, Cellular Business (Feb 1994)).

We respectfully traverse the Examiner’s Section 103(a) rejection, for at least the reasons outlined in our previous Response (filed September 22, 2006), incorporated herein by reference. In particular, we maintain that the proposed combination of Katz and Spoor would not teach or suggest all of the features of any pending claim. In particular, Further, it would destroy the principle of operation of the Katz system, namely, providing the providing of an upsell offer following completion of a transaction. Changing Katz to create packages or combinations would simply create a new type of product available as an “initial product” in the Katz system, obviating any need for the upsell process described in Katz. See Spoor, paragraph 10 (“[Customers] will understand that you are selling them a product as part of a low-priced package deal.”). Nonetheless, the independent claims have been amended, as discussed below, and Applicants request that the Examiner reconsider the pending claims in light of Katz and Spoor.

Applicants intend to pursue the subject matter of original and/or subsequently amended claims in one or more continuing applications.

1. Amended Independent Claim 1

Independent Claim 1 has been amended and now provides for a feature of:

wherein the offer for the subsidy from the second vendor does not require the customer to commit to a service agreement for any item of the purchase from the first vendor in order to receive the reduction in price relative to the total price of the purchase from the first vendor.

As best understood by Applicants, Spoor teaches only a subsidy from a cellular service provider for the purchase of a cellular telephone (e.g., on sale by a retailer). The customer is required to sign up for cellular service when they purchase the cellular telephone. See Spoor, paragraph 10 (“[Customers] will understand that you are selling them a product as part of a low-priced package deal.”); paragraphs 16-17 (“‘You have to convince the customer that the phone is really just a means for the service...’. ‘Long after the novelty of the handset wears off, they are still using the service and that is what they are buying.’”). Accordingly, the only evidence currently relied upon with respect to subsidy offers (Spoor) teaches a price subsidy that must be based on a “package,” in particular a package based on an essential and specific interdependence between purchased hardware (the cell phone) and a service required for that purchased hardware.

In contrast, the above recited feature of Claim 1 provides for an offer for a subsidy from a second vendor for a purchase at a first vendor, in which the offer does not depend on the customer committing to a service agreement for anything the customer is purchasing from the first vendor. Neither Katz nor Spoor, alone or in combination, teach or suggest such a feature. For at least this reason, Applicants respectfully request the Examiner’s reconsideration and allowance of independent Claim 1.

Applicants also note that a stray comma has been deleted and a minor clarification has been made in Claim 1 to provide for consistent use of “for” as in “for purchase.”

Accordingly, we respectfully request the Examiner’s reconsideration of the rejection of independent Claim 1 (and dependent Claims 2-31, 35, and 83-101).

2. Amended Independent Claims 36, 41, 42, 49, 51-56, 60-65, 72-74, 81 and 82

All of the other independent Claims 36, 41, 42, 49, 51-56, 60-65, 72-74, 81 and 82 have been amended and now provide generally for a feature of *wherein the*

offer for the subsidy from the second vendor does not require a customer to commit to a service agreement for an item (for purchase from another vendor). For at least the reasons stated above with respect to Claim 1, neither Katz nor Spoor, alone or in combination, teach or suggest such a feature.

Accordingly, we respectfully request the Examiner's reconsideration of the rejection of Claims 36, 41, 42, 49-56, 60-65, 72-77, and 80-82.

D. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, the Examiner's interpretation of claimed subject matter or the Specification, or the propriety of any asserted combination(s) of teachings, is not to be understood as agreement with the Examiner. As the Examiner has not established an un rebuttable prima facie case for rejecting any of the claims as pending, for at least the reasons stated in this paper, we need not address all of the Examiner's assertions at this time. Also, the absence of arguments for patentability other than those presented in this paper should not be construed as either a disclaimer of such arguments or as an indication that such arguments are not believed to be meritorious.

E. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We understand that a one-month extension of time to respond to the Office Action is necessary.

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Charge: \$120.00

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F. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mtdowns@walkerdigital.com.

Respectfully submitted,

June 27, 2007
Date

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